IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2528 OF 2004

Prem Nellirajgopal Naidu ... Applicant

versus

State of Maharashtra ... Respondent

...

Mr. Ramrao Adik with Mr. Peter Lobo, for the Applicant.

Mr.A.S. Gadkari, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

7th October 2004

P.C.:

. Heard Counsel for the parties. Perused the record.

. The Counsel for the Applicant mainly argued that except the confessional statement of co-accused Sarode, there is no other material against the Applicant and that by itself cannot be sufficient to rope in the Applicant in the commission of offence.

. This submission has been countered by the learned A.P.P. by placing reliance on several other circumstances and materials, which have come on record during the course of investigation. The learned A.P.P. has relied on the statement of Nirmalarani from whom flat was taken on rental basis in which the Applicant took active part, which flat, according to the prosecution, was used for keeping the answer sheets which were to be replaced. Reliance is also placed on the circumstance that the Zen car which was intercepted and which was driven by Mr. Sanjay Patil is owned by the Applicant. Besides, reliance is also placed on the record pertaining to mobile calls made by the Applicant to co-accused and received from the co-accused during the relevant time. Similar record is relied with regard to SMS and Pager messages received and made by the accused inter se. My attention is also invited to the confidential docket which would reveal that the answer sheets of the Applicant were missing from the record, as also to the communication sent, indicating that the Applicant's name be included in the merit list. Reliance is also placed on the statement of Jitesh Solanki, who, in turn, has issued about

six sim cards, which were operated by the Applicant and the co-accused. Reliance is also placed on the house search panchnama of the co-accused to support the contention that there is other material on record to bring home the connection of the Applicant with the commission of the offence. The confessional statement of the co-accused Sarode is not the only material against the Applicant.

. I am inclined to accept the submission canvassed on behalf of the learned A.P.P. that all these materials would indicate the involvement of the Applicant, being conspirator along with the co-accused.

. However, Counsel for the Applicant submits that in the present case, offence is registered on 20th June 2002 and the Applicant has been arrested on 28th January 2003. Since then, he is in custody. According to the Applicant, investigation is completed and charge sheet has been laid against the Applicant. On this premise, it is contended that no fruitful purpose would be served by continuing the Applicant in judicial custody, coupled with the

fact that there is uncertainty of trial being concluded at an early date, having regard to the complexity of the matter. Reliance is also placed on the decision of the Apex Court reported in (2002) 10 S.C.C. 677 in the case of Mehmood Mohammed Sayeed v. State of Maharashtra; (2002) 10 S.C.C. 199 in the case of Sri Ram Choubey v. State of Bihar and another; (2002) 10 S.C.C. 373 in the case of Olga Kozireva v. Department of Customs; and (2002) 10 S.C.C. 403 in the case of Sanjay alias Bablu alias Keja v. State of Gujarat, to contend that in such a situation, the Applicant deserves to be enlarged on bail on any strict conditions that the Court may impose. To this submission, learned A.P.P. submits that it is incorrect to suggest that investigation is completed, because the investigation is still going on and further charge sheet is likely to be filed. He, therefore, submits that reliance placed on the reported decisions will be of no avail because, in those cases, investigation was completed and charge sheet was filed. Unlike in the present case, further investigation is going on and is being supervised by the High Court in one of the public interest litigations. He has also placed reliance on the unreported order of

this Court dated 15th September 2004 in the case of Pramod Waman Kadam v. State of Maharashtra, Criminal Application No. 3066 of 2004, where similar argument was considered and rejected at the instance of co-accused Pramod Kadam, as can be discerned from the observations in para 7 of the said order.

. The learned A.P.P. further submits that in the present case, it is a matter of record that the Applicant was absconding for more than 7 months and non-bailable warrants were required to be issued to secure his arrest and inspite of issuance of non-bailable warrants, the Applicant was arrested only in January 2003. Even this reason is cited to support the argument that no indulgence be shown to the Applicant for being released on bail, inspite of the principle stated in the reported decisions of the Apex Court, referred to above.

. Having considered the rival submissions, as mentioned earlier, I have no difficulty in accepting the argument of the learned A.P.P. that besides the confessional statement of Sarode, there is overwhelming record to show that

the Applicant was involved in the conspiracy and is a co-conspirator along with the co-accused. The Applicant took active part and facilitated commission of offence. The circumstances and materials have been pointed out by the learned A.P.P., which are already mentioned earlier. In that view of the matter, I see no reason to depart from the conclusion reached by the trial Court that prima facie there is sufficient corroboration to the statement of Sudhakar Sarode, so as to establish the involvement of the Applicant in the commission of offence. If it is so, there is no reason to grant bail to the present Applicant.

. However, to get over this position, it was lastly submitted that since the investigation is completed and charge sheet has been filed against the Applicant, the Applicant be released on bail applying the principles stated by the Apex Court in the reported decisions (supra) on any strict conditions. Even this submission does not commend to me having regard to the fact situation of the present case. In the present case, as is contended by the learned A.P.P., investigation is still incomplete. It is seen

from the reported decisions (supra) that the Supreme Court showed indulgence because the investigation was completed and the charge sheet was already laid and what remained was only trial of the case. In the present case, the investigation is still going on and is being supervised by the High Court in the public interest litigation. Be that as it may, the record also indicates that the Applicant had absconded for sufficiently long period and could not be arrested in spite of the issuance of non-bailable warrant qua him. Taking overall view of the matter, I am not inclined to grant bail to the present Applicant. Hence, dismissed.